



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Cleta Mitchell, Esq.  
Foley & Lardner LLP  
3000 K Street, N.W. Suite 600  
Washington, DC 20007-5109  
CMitchell@foley.com

**DEC 19 2017**

RE: MUR 7301(RR 17L-16)  
Reform America Fund and Lorri  
Pickens in her official capacity as  
treasurer

Dear Ms. Mitchell:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Reform America Fund and Lorri Pickens in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 7, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On December 5, 2017, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1), a provision of the Act. The Factual and Legal Analysis, which formed the basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your clients' consideration.

Please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified in writing that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

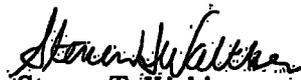
If your clients are interested in engaging in pre-probable cause conciliation, please contact Derek Ross, the attorney assigned to this matter, at (202) 694-1579, or (800) 424-9530, or [dross@fec.gov](mailto:dross@fec.gov), within seven days of receipt of this letter. During conciliation, you and your clients may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, the Commission may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

We look forward to your response.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 RESPONDENTS: Reform American Fund and Lorri Pickens MUR 7301  
5 in her official capacity as treasurer

6 **I. INTRODUCTION**  
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8 The Reports Analysis Division (“RAD”) referred Reform America Fund and Lorri  
9 Pickens in her official capacity as treasurer (“the Committee”) to the Office of General Counsel  
10 for failing to file two 24-Hour Reports totaling \$1,044,256.46 to support two independent  
11 expenditures disclosed on its 2016 30-Day Post-General Report. For the reasons set out below,  
12 the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(g) by  
13 failing to file 24-Hour Reports.

14 **II. FACTUAL BACKGROUND**

15 The Committee is an independent-expenditure-only political committee that registered  
16 with the Commission on July 24, 2015.<sup>1</sup> On December 7, 2016, the Committee filed its 2016  
17 30-Day Post-General Report (“the Report”) covering its activity from October 20, 2016, through  
18 November 28, 2016, and disclosing 22 independent expenditures (“IEs”) totaling \$2,553,226.92  
19 made in opposition to two federal candidates, Hillary Clinton and Russ Feingold.<sup>2</sup>

20 The Report revealed that the Committee failed to file two 24-Hour Reports to support IEs  
21 totaling \$1,044,256.46, which were first disclosed on the Report.<sup>3</sup> The IEs were in connection

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<sup>1</sup> See Statement of Organization, filed July 24, 2015.

<sup>2</sup> See RAD Referral of Reform America Fund, 17L-16 (June 6, 2017) (“Referral”), incorporated herein by reference.

<sup>3</sup> *Id.* at 2.

1 with two expenditures of \$522,128.33, each for two ads disseminated on October 31, 2016,  
2 opposing Clinton and Feingold.<sup>4</sup>

3 On March 5, 2017, the Commission sent a Request for Additional Information (“RFAI”)  
4 to the Committee noting the Committee’s failure to file the required 24-Hour Reports.<sup>5</sup> On  
5 April 6, the Committee’s treasurer called RAD and asked how to resolve the issue.<sup>6</sup> RAD  
6 recommended that the Committee verify that it had filed all relevant reports and advised that the  
7 Committee could provide additional clarification for the public record.<sup>7</sup>

8 On April 10, the Committee filed an Amended 2016 30-Day Post-General Report, which  
9 disclosed no changes in IE activity from the original report. On April 19, RAD contacted the  
10 Committee’s treasurer to inform the Committee that it could be referred to OGC for potential  
11 further action. RAD also informed the Committee that it could file an additional amendment or  
12 Miscellaneous Electronic Submission to provide further clarification about the missing 24-Hour  
13 Reports. The treasurer stated that she understood and would consider filing a statement.<sup>8</sup>

14 On April 20, the Committee’s compliance consultant informed RAD that the Committee  
15 should have attached a memo text to the Amended Report filed on April 10, but had  
16 inadvertently omitted it, and that the Committee would file an FEC Form 99 to provide further  
17 clarification. The Committee filed a Form 99 the next day, which stated that the Committee had  
18 procedures in place to ensure that all reports are timely filed, and the two IEs at issue here were

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<sup>4</sup> *Id.* at Attachment 2. Each IE involved purchasing additional airtime for two ads that were already airing, one opposing Clinton, and the other opposing Feingold. *Id.* at 2.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

1 “an exception.”<sup>9</sup> In its response to the Notice of Referral, the Committee reiterated that it has a  
2 compliance system in place to ensure that all IEs are properly reported and that the two  
3 unreported IEs merely “fell through the cracks” during the closing days of the 2016 general  
4 election.<sup>10</sup>

### 5 III. LEGAL ANALYSIS

6 The Federal Election Campaign Act of 1971, as amended (the “Act”), requires committee  
7 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.  
8 § 30104(b).<sup>11</sup> This requirement includes reporting independent expenditures (“IEs”) made by  
9 political committees other than authorized committees.<sup>12</sup> Every political committee that makes  
10 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.  
11 § 104.3(b)(3)(vii).<sup>13</sup> In addition, political committees that make IEs aggregating \$1,000 or more  
12 with respect to a given election after the 20th day, but more than 24 hours before the date of that  
13 election, must disclose them within 24 hours following the date of dissemination.<sup>14</sup> These  
14 reports, known as 24-Hour Reports, must be filed within 24 hours after each time the committee  
15 makes or contracts to make IEs aggregating an additional \$1,000.<sup>15</sup>

16 Here, the record demonstrates—and the Committee does not deny—that it failed to file  
17 24-Hour Reports for the two IEs totaling \$1,044,256.46. The IEs were disseminated on October

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<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> Resp. at 2.

<sup>11</sup> 52 U.S.C. § 30104(a)(1).

<sup>12</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

<sup>13</sup> 11 C.F.R. § 104.4(a).

<sup>14</sup> 52 U.S.C. § 30104(g)(1)(A); 11 C.F.R. § 104.4(c).

<sup>15</sup> 52 U.S.C. § 30104(g)(1)(B); 11 C.F.R. § 104.4(c).

**Factual and Legal Analysis**  
**MUR 7301 (Reform America Fund)**

1 31, 2016, the Committee did not file the required 24-Hour Reports, and did not file a Form 99  
2 explaining its failure to do so until April 21, 2017. Accordingly, the Commission finds reason to  
3 believe Reform America Fund and Lorri Pickens in her official capacity as treasurer violated 52  
4 U.S.C. § 30104(g)(1).